13319 - Abortion after the soul has been breathed into the foetus

the question

What is the ruling on abortion after the fifth month of pregnancy?

Detailed answer

Praise be to Allah.

The fuqaha’ of the Sunni Islamic madhhabs are agreed that it is haram to kill the foetus after the soul has been breathed into it, i.e., after 120 days have passed since conception. It is not permissible to kill it under any circumstances except when continuing the pregnancy would lead to the mother’s death.

The differences among the fuqaha’ have to do with abortion in the period before the soul is breathed into the foetus. After the soul is breathed into it, the fuqaha’ are agreed that the foetus has become a human being and a soul which has dignity and is to be respected. Allah says (interpretation of the meaning):

“And indeed We have honoured the Children of Adam…”[al-Israa’ 17:70]

And He says (interpretation of the meaning):

“… if anyone killed a person not in retaliation of murder, or (and) to spread mischief in the land — it would be as if he killed all mankind, and if anyone saved a life, it would be as if he saved the life of all mankind…”[al-Maa'idah 5:32]

The Maaliki faqeeh Ibn Jizzi narrated in al-Qawaaneen al-Fiqhiyyah that there was scholarly consensus that it is haram to have an abortion after the soul has been breathed into the foetus. He said: “When the womb has accepted the sperm it is haram to interfere with it. It is worse (to do so) when it has been formed; and it is worse when the soul has been breathed into it, for that is

considered to be the killing of a soul, according to scholarly consensus.” (al-Qawaaneen al-Fiqhiyyah, 141)

Similarly it says in Nihaayat al-Muhtaaj: “The prohibition becomes stronger the closer the time is for the soul to be breathed into the foetus, because it is a crime. Then if it has taken on a human form and the midwives can palpate it, it must be protected fully.” (Nihaayat al-Muhtaaj, 8/442)

The author of al-Bahr al-Raa’iq stated that when some of the features of the foetus become distinct, it is to be considered as a child. The author of al-Binaayah said: “It is not permitted to interfere with the foetus once its features have become distinct. If it can be distinguished from the ‘alaqah (clot) and the blood, it should be considered as having become a soul, and there is no doubt that the sanctity of the soul is protected by scholarly consensus and by the texts of the Qur’aan.”

Thus it is clear to us that abortion after the soul has been breathed into the foetus is a crime which it is not permitted to commit, except in cases of extreme and certain necessity, not where necessity is merely imagined, i.e., where the necessity is proven. This means cases where preserving the foetus would put the mother’s life in danger, noting that with the advances in modern medicine and the scientific possibilities available nowadays, abortions performed to save the mother’s life have become very rare.